

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAMAR H. CAUSEY, SR.,
Plaintiff,

v.

ALAMEDA COUNTY SANTA RITA
JAIL,
Defendant.

Case No. 20-02703 BLF (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against the Santa Rita County Jail, where he is currently being detained. Dkt. No. 1. Plaintiff's motion for leave to proceed *in forma pauperis* shall be addressed in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any

1 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
 2 upon which relief may be granted or seek monetary relief from a defendant who is immune
 3 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
 4 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 6 elements: (1) that a right secured by the Constitution or laws of the United States was
 7 violated, and (2) that the alleged violation was committed by a person acting under the
 8 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

9 **B. Plaintiff's Claims**

10 Plaintiff is suing the Santa Rita County Jail ("Jail") for injuries he suffered when
 11 another inmate "squirt[ed him] with his bodily fluids of a concoction of urine and feces,"
 12 which made contact with Plaintiff's eyes, "causing a burning sensation and down my
 13 throat which had me vomiting for days." Dkt. No. 1 at 3. Plaintiff holds the Jail liable
 14 because this same inmate "was responsible for the firing of three Alameda County Sheriff
 15 deput[ies] which made headline news as well as the newspaper." *Id.* Plaintiff claims this
 16 inmate should not have been allowed to program with other inmates because he was
 17 documented for this type of behavior. *Id.* Plaintiff seeks damages. *Id.*

18 The complaint is deficient for several reasons. First of all, the Prison Litigation
 19 Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA"), amended 42
 20 U.S.C. § 1997e to provide that "[n]o action shall be brought with respect to prison
 21 conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in
 22 any jail, prison, or other correctional facility until such administrative remedies as are
 23 available are exhausted." 42 U.S.C. § 1997e(a). Here, Plaintiff clearly did not exhaust
 24 administrative remedies before filing this suit as required by the PLRA as he indicates on
 25 the complaint that he did not present the facts of his complaint for review through the
 26 grievance procedure believing it "doesn't involve[] the grievance procedure" as it
 27 "involves an inmate throwing bodily fluids on me." Dkt. No. 1. Plaintiff is simply
 28

1 mistaken.

2 The PLRA itself does not define prison conditions, but the Supreme Court has
3 broadly construed the term. *Roles v. Maddox*, 439 F.3d 1016, 1018 (9th Cir. 2006).
4 “[T]he PLRA’s exhaustion requirement applies to all inmate suits about prison life,
5 whether they involve general circumstances or particular episodes, and whether they allege
6 excessive force or some other wrong.” *Porter v. Nussle*, 534 U.S. 516, 532 (2002); *see*,
7 *e.g.*, *Roles*, 439 F.3d at 1018 (exhaustion requirement applies to claim that private prison
8 employee confiscated prisoner’s magazines); *Bennett v. King*, 293 F.3d 1096, 1097-98 (9th
9 Cir. 2002) (exhaustion requirement applies to claims of harassment by prison officials in
10 retaliation for prisoner’s religious expression). Plaintiff wants to hold the Jail liable for
11 injuries sustained when he was exposed to an inmate with documented behavioral issues.
12 Such an episode falls squarely in the realm of “prison life” as defined in *Porter*, 534 U.S.
13 at 532. Furthermore, exhaustion of all “available” remedies is mandatory; those remedies
14 need not meet federal standards, nor must they be “plain, speedy and effective.” *Id.* at 524;
15 *Booth v. Churner*, 532 U.S. 731, 739-40 & n.5 (2001). Even when the prisoner seeks relief
16 not available in grievance proceedings, notably money damages, exhaustion is a
17 prerequisite to suit. *Id.* at 741. A prisoner “seeking only money damages must complete a
18 prison administrative process that could provide some sort of relief on the complaint
19 stated, but no money.” *Id.* at 739. Accordingly, Plaintiff must first pursue all available
20 remedies through the Jail’s grievance procedures before he may bring this suit for damages
21 against the Jail.

22 Secondly, Plaintiff’s allegations must be sufficient to satisfy the two elements for a
23 § 1983 claim: (1) that a right secured by the Constitution or laws of the United States was
24 violated, and (2) that the alleged violation was committed by a person acting under the
25 color of state law. *See West v. Atkins*, 487 U.S. at 48. Plaintiff’s allegations are
26 insufficient in this regard as he fails to identify the constitutional right that was violated by
27 the incident and the specific Defendant(s) responsible for the alleged violation. Plaintiff
28

1 shall be granted leave to amend to correct these deficiencies, provided he can allege that he
2 properly exhausted his claims before filing this action.

3 In preparing an amended complaint, Plaintiff should keep the following principles
4 in mind. Liability may be imposed on an individual defendant under § 1983 only if
5 Plaintiff can show that the defendant proximately caused the deprivation of a federally
6 protected right. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of*
7 *Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a
8 constitutional right within the meaning of section 1983 if he does an affirmative act,
9 participates in another's affirmative act or omits to perform an act which he is legally
10 required to do, that causes the deprivation of which the plaintiff complains. *See Leer*, 844
11 F.2d at 633. Accordingly, Plaintiff must allege sufficient facts describing each named
12 defendant's actions or failure to act that caused the violation of his Eighth Amendment
13 rights.

14 15 CONCLUSION

16 For the reasons state above, the Court orders as follows:

17 1. The complaint is **DISMISSED with leave to amend**. Within **twenty-eight**
18 **(28) days** from the date this order is filed, Plaintiff shall file an amended complaint using
19 the court's form complaint. The amended complaint must include the caption and civil
20 case number used in this order, *i.e.*, Case No. C 20-02703 BLF (PR), and the words
21 "AMENDED COMPLAINT" on the first page. Plaintiff must answer all the questions on
22 the form in order for the action to proceed. Plaintiff is reminded that the amended
23 complaint supersedes the original, and Plaintiff may not make references to the original
24 complaint. Claims not included in the amended complaint are no longer claims and
25 defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*
26 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

27 2. If Plaintiff has not exhausted the claims in the amended complaint, this
28

1 action will be subject to dismissal for failure to exhaust administrative remedies. *See*
2 *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc). He may move for
3 voluntary dismissal of this action if it appears futile to file an amended complaint due to
4 his failure to exhaust administrative remedies before filing suit.

5 **Failure to respond in accordance with this order by filing an amended**
6 **complaint in the time provided will result in the dismissal of this action without**
7 **prejudice and without further notice to Plaintiff.**

8 **IT IS SO ORDERED.**

9 **Dated: _September 4, 2020_____**



BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

25 Order of Dismissal with Leave to Amend
26 PRO-SE\BLF\CR.20\02703Causey_dwlt